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Atty. Docket No. 067252.0105

Appl. No. 09/611,419

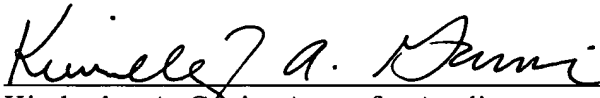
PATENT

5521 THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Leonard A. Smith et al. Conf. No. : 6819  
Serial No. : 09/611,419 Examiner : Portner, Virginia Allen  
Filed : July 6, 2000 Group Art Unit : 1645  
For : RECOMBINANT VACCINE AGAINST BOTULINUM NEUROTOXIN

**PETITION FOR REVIVAL OF UNINTENTIONALLY  
ABANDONED PATENT APPLICATION PURSUANT TO 37 C.F.R. §1.137(b)**

I hereby certify that this paper is being deposited on August 3, 2006 with the United States Postal Service as first class mail in an envelope addressed to: **Mail Stop AF**, Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450.

  
Kimberley A. Gavin, Agent for Applicants

PTO Reg. No. 51,723

**Mail Stop AF**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This Petition for Revival of Abandoned Application under 37 C.F.R. §1.137(b) is being submitted in connection with the above-identified patent application. This petition is accompanied by:

(1) a Response to the October 17, 2005 Final Office Action. The Response consists of (i) a Request for Continued Examination; (ii) a petition for a three (3)-month extension of time and a check in the amount of \$1020, pursuant to 37 C.F.R. §1.17(a)(3); and (iii) a response to the October 17, 2005 Final Office Action;

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(2) a check in the amount of \$1500, in payment of the fee for a petition to revive unintentionally abandoned patent application pursuant to 37 C.F.R. §1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b)(3) was unintentional. A Terminal Disclaimer is not required since this application was filed after June 8, 1995.

### **STATEMENT**

Applicants respectfully petition to revive the above-identified application, in accordance with 37 C.F.R. § 1.137(b), as the abandonment was unintentional. This application became abandoned due to an unintentional failure to file a response to an October 17, 2005 Final Office Action by the six month deadline from the mailing date. The October 17, 2005 Office Action was mailed to the Baker Botts Washington D.C. address at The Warner Suite 1300, 1299 Pennsylvania Avenue NW, Washington, D.C. 20004-2400. The application, however, is being handled and prosecuted in the Baker Botts New York office, and, somehow, the Office Action was not forwarded to the New York office. Because the Baker Botts New York office was not aware of the mailing of the Final Office Action, no action due was entered into the New York office docketing system. Consequently, the April 17, 2006 deadline for filing a response to the final Office Action passed without notice or action.

The mailing of the final Office Action first came to the attention of the undersigned on June 20, 2006, during a routine review of the status of the application through the United States Patent and Trademark Office's online PAIR web site. The undersigned accessed PAIR to determine where the application was in prosecution, expecting that an Office Action

might be forthcoming. Upon learning that a final Office Action had been mailed on October 17, 2005, the undersigned immediately reviewed the file and the docketing system to determine whether the Office Action had been received and docketed in the New York Office. It had not. The undersigned then prepared a response to the final Office Action, submitted herewith. On July 15, the undersigned first learned, during a subsequent review of the status of the application on the PAIR web site, that a Notice of Abandonment had been mailed on June 26, 2006, again to the Baker Botts Washington, D.C. office. The undersigned notes that no copy of the Notice of Abandonment has been mailed to the Baker Botts New York office, and thus, has not been docketed until now.

Therefore, due to an inadvertent and unintentional error committed without deceptive intent, Applicants did not docket the mailing of the October 17, 2005 final Office Action and the April 17, 2006 deadline for responding thereto. As a result, the instant application became abandoned. Applicants hereby aver that the entire delay in filing a timely response, including a Request for Continued Examination and a Petition to Extend Time, was unintentional.

### **CONCLUSION**

Applicants respectfully request that this Petition For Revival of Unintentionally Abandoned Patent Application pursuant to 37 C.F.R. §1.137(b) be granted and that the revived application be allowed to continue prosecution.

In addition to the fees accompanying this response, Applicants believe that no additional fee is required in connection with the submission of this document. However, should any fee be required, or if any overpayment has been made, the Director is hereby authorized to charge any fees, or credit any overpayments, to Deposit Account 02-4377. A duplicate copy of this petition is enclosed.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kimberley A. Gavin", is written over a horizontal line.

Kimberley A. Gavin, Reg. No. 51,723  
Agent for Applicants

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Lisa B. Kole, Reg. No. 35,225  
Attorney for Applicants

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